

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

DAVID CORCIA,

Plaintiff,

v.

BARCLAYS BANK DELAWARE; EQUIFAX
INFORMATION SERVICES, LLC; EXPERIAN
INFORMATION SOLUTIONS, INC; and TRANS
UNION, LLC,

Defendants.

Case No.: 7:17-cv-1751

ECF Case

EXPERIAN INFORMATION SOLUTIONS, INC.'S
ANSWER AND AFFIRMATIVE DEFENSES

NOW COMES defendant Experian Information Solutions, Inc. (“Experian”), by its undersigned counsel, and in answer to the Complaint and Demand for Jury Trial of Plaintiff David Corcia (“Plaintiff”), states as follows:

INTRODUCTION AND BACKGROUND FACTUAL STATEMENT

1. In response to Paragraph 1 of the Complaint, Experian admits that Plaintiff has alleged claims under the Fair Credit Reporting Act (“FCRA”), 15 U.S.C. § 1681 et seq. Except as specifically admitted, Experian denies, generally and specifically, each and every remaining allegation contained in Paragraph 1 of the Complaint.

2. In response to Paragraph 2 of the Complaint, Experian is without knowledge or

information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

3. In response to Paragraph 3 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies such allegations, except that Experian admits that Plaintiff has annexed a writing to the Complaint as Exhibit C. Experian states that the writing speaks for itself, and Experian denies the allegations of Paragraph 3 of the Complaint to the extent they are inconsistent with the writing. Experian denies, generally and specifically, each and every remaining allegation contained in Paragraph 3 of the Complaint.

4. In response to paragraph 4 of the Complaint, Experian states that the allegations contained therein are legal conclusions for which no response is required. To the extent that a response is required, Experian is without knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every allegation of paragraph 4 of the Complaint.

5. In response to Paragraph 5 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

6. In response to Paragraph 6 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

7. In response to Paragraph 7 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

8. In response to Paragraph 8 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

9. In response to Paragraph 9 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

10. In response to Paragraph 10 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

11. In response to Paragraph 11 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

12. In response to Paragraph 12 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

13. In response to Paragraph 13 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to any allegations related to Experian, Experian denies, generally and specifically, each and every remaining allegation contained in Paragraph 13 of the Complaint.

14. In response to Paragraph 14 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a

belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to any allegations related to Experian, Experian denies, generally and specifically, each and every remaining allegation contained in Paragraph 14 of the Complaint.

15. In response to Paragraph 15 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

16. In response to Paragraph 16 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to any allegations related to Experian, Experian denies, generally and specifically, each and every remaining allegation contained in Paragraph 16 of the Complaint.

17. In response to Paragraph 17 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

18. In response to Paragraph 18 of the Complaint, Experian states that Plaintiff attempts to interpret the legal decision *Safeco Ins. Co. of Am. v. Burr*, 127 S. Ct. 2201 (2007), which speaks for itself, and Experian denies the allegations of Paragraph 18 of the Complaint to the extent they are inconsistent with *Safeco Ins. Co. of Am. v. Burr*, 127 S. Ct. 2201 (2007). Experian denies, generally and specifically, each and every remaining allegation contained in Paragraph 18 of the Complaint.

JURISDICTION

19. In response to Paragraph 19 of the Complaint, Experian affirmatively states that Plaintiff has alleged jurisdiction based on 15 U.S.C. § 1681(p). Experian states that these allegations are legal conclusions which are not subject to denial or admission. To the extent that a response is required, Experian is without knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every allegation of paragraph 19 of the Complaint.

20. In response to paragraph 20 of the Complaint, Experian states that the allegations contained therein are legal conclusions for which no response is required. To the extent that a response is required, Experian is without knowledge or information sufficient to form a belief as to the truth of these allegations and on that basis denies, generally and specifically, each and every allegation of paragraph 20 of the Complaint.

PARTIES

21. In response to Paragraph 21 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

22. In response to Paragraph 22 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

23. In response to Paragraph 23 of the Complaint, Experian admits that it is an Ohio corporation, with its principal place of business in Costa Mesa, California. Except as specifically admitted, Experian denies, generally and specifically, each and every remaining allegation

contained in Paragraph 23.

24. In response to Paragraph 24 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

25. In response to Paragraph 25 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

26. In response to Paragraph 26 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

27. In response to Paragraph 27 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

28. In response to Paragraph 28 of the Complaint, Experian is without knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

COUNT 1

29. In response to Paragraph 29 of the Complaint, Experian incorporates by reference, as if fully set forth herein, its responses to all prior Paragraphs of the Complaint. To the extent not already answered, Experian denies, generally and specifically, each and every allegation contained in Paragraph 29.

30. In response to Paragraph 30 of the Complaint, Experian states that the allegations contained therein are legal conclusions for which no response is required. Experian further states

that Plaintiff quotes from 15 U.S.C. § 1681i, which statute speaks for itself. To the extent that a response is required, Experian denies, generally and specifically, each and every allegation contained in Paragraph 30.

31. In response to Paragraph 31 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to allegations related to Experian, Experian denies, generally and specifically, each and every allegation contained in Paragraph 31.

32. In response to Paragraph 32 of the Complaint, Experian states that the allegations contained therein are legal conclusions for which no response is required. Experian further states that Plaintiff quotes from 15 U.S.C. § 1681e, which statute speaks for itself. To the extent that a response is required, Experian denies, generally and specifically, each and every allegation contained in Paragraph 32.

33. In response to Paragraph 33 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to allegations related to Experian, Experian denies, generally and specifically, each and every allegation contained in Paragraph 33.

34. In response to Paragraph 34 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to allegations related to Experian, Experian denies, generally and specifically, each and every allegation contained in Paragraph 34.

35. In response to Plaintiff's unnumbered Prayer for Judgment on page 7 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to any allegations related to Experian, Experian denies that Plaintiff is entitled to the relief sought, and denies, generally and specifically, each and every remaining allegation contained in Plaintiff's Prayer for Judgment on page 7 of the Complaint.

COUNT II

36. In response to the unnumbered paragraph on page 7 beginning "Plaintiff incorporates . . .", Experian incorporates by reference, as if fully set forth herein, its responses to all prior Paragraphs of the Complaint. To the extent not already answered, Experian denies, generally and specifically, each and every allegation contained in the unnumbered paragraph on page 7.

37. In response to Paragraph 35 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to allegations related to Experian, Experian denies, generally and specifically, each and every allegation contained in Paragraph 35.

38. In response to Paragraph 36 of the Complaint, Experian is without knowledge or information sufficient to form a belief regarding Plaintiff's allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

39. In response to Paragraph 37 of the Complaint, Experian affirmatively states that Plaintiff quotes from 15 U.S.C. § 1681s-2(b), which statute speaks for itself. To the extent that

a response is required, Experian denies, generally and specifically, each and every allegation contained in Paragraph 37.

40. In response to Paragraph 38 of the Complaint, Experian is without knowledge or information sufficient to form a belief regarding Plaintiff's allegations and, on that basis, denies, generally and specifically, each and every allegation contained therein.

41. In response to Paragraph 39 of the Complaint, Experian states that the allegations contained therein are legal conclusions to which no response is required. To the extent a response is required, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations.

42. In response to Paragraph 40 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to any allegations related to Experian, Experian denies, generally and specifically, each and every remaining allegation contained in Paragraph 40 of the Complaint.

43. In response to Plaintiff's unnumbered Prayer for Judgment on page 8 of the Complaint, with regard to allegations related to the other defendants, Experian does not have knowledge or information sufficient to form a belief as to the truth of such allegations and, on that basis, denies, generally and specifically, such allegations. With regard to any allegations related to Experian, Experian denies that Plaintiff is entitled to the relief sought, and denies, generally and specifically, each and every remaining allegation contained in Plaintiff's Prayer for Judgment on page 8 of the Complaint.

JURY DEMAND

44. In response to Plaintiff's unnumbered Jury Demand on pages 8-9 of the Complaint, Experian admits that Plaintiff requests a trial by jury. Experian denies, generally and specifically, each and every remaining allegation contained in Plaintiff's Jury Demand on pages 8-9 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

The Complaint herein, and each cause of action thereof, fails to set forth facts sufficient to state a claim upon which relief may be granted against Experian and further fails to state facts sufficient to entitle Plaintiff to the relief sought, or to any other relief whatsoever from Experian.

SECOND AFFIRMATIVE DEFENSE

All of Plaintiff's claims against Experian are barred by the qualified immunity of 15 U.S.C. § 1681h(e).

THIRD AFFIRMATIVE DEFENSE

All of Plaintiff's claims against Experian are barred because any information Experian communicated to any third person regarding Plaintiff was true.

FOURTH AFFIRMATIVE DEFENSE

Experian is informed and believes and thereon alleges that any purported damages allegedly suffered by Plaintiff are the results of the acts or omissions of third persons over whom Experian had neither control nor responsibility.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff has failed to mitigate his damages.

SIXTH AFFIRMATIVE DEFENSE

Any alleged damages sustained by Plaintiff were, at least in part, caused by the actions of Plaintiff and resulted from Plaintiff's own negligence which equaled or exceeded any alleged negligence or wrongdoing by Experian.

SEVENTH AFFIRMATIVE DEFENSE

Any damages which Plaintiff may have suffered, which Experian continues to deny, were the direct and proximate result of the conduct of Plaintiff. Therefore, Plaintiff is estopped and barred from recovery of any damages.

EIGHTH AFFIRMATIVE DEFENSE

The Complaint, and each claim for relief therein that seeks equitable relief, is barred by the doctrine of unclean hands.

NINTH AFFIRMATIVE DEFENSE

The Complaint and each and every claim for relief therein is barred by laches.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the statute of limitations.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff's alleged damages were not cause by Experian, but by an independent intervening cause.

TWELFTH AFFIRMATIVE DEFENSE

Experian reserves the right to assert additional affirmative defenses at such time and to such extent as warranted by discovery and the factual developments in this case.

THIRTEENTH AFFIRMATIVE DEFENSE

Any claims for exemplary or punitive damages violate Experian's rights under the First,

Fifth, Sixth, Eighth and Fourteenth Amendments to the United States Constitution and analogous provisions of any applicable State Constitutions.

FOURTEENTH AFFIRMATIVE DEFENSE

Plaintiff's state law claims are preempted by the FCRA, including, but not limited to 15 U.S.C. § 1681t.

WHEREFORE, Defendant Experian Information Solutions, Inc. prays as follows:

- (1) That Plaintiff take nothing by virtue of the Complaint herein and that this action be dismissed in its entirety;
- (2) For costs of suit and attorneys' fees herein incurred; and
- (3) For such other and further relief as the Court may deem just and proper.

April 6, 2017

Respectfully submitted,

/s/ R. Harrison Golden

R. Harrison Golden, Esq. (RG-0335)

Jones Day

250 Vesey Street

New York, New York 10281

Telephone: (212) 326-3727

Facsimile: (212) 755-7306

hgolden@jonesday.com

Attorney for Defendant

Experian Information Solutions, Inc.

CERTIFICATE OF SERVICE

I, R. Harrison Golden, certify that on April 6, 2017, I caused the foregoing Answer and Affirmative Defenses of Experian Information Solutions, Inc. to be filed with the Clerk of the Court and served upon all counsel of record via the CM/ECF system.

/s/ R. Harrison Golden

R. Harrison Golden